

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CURTIS MILLER,

Plaintiff,

v.

B. CATES, FAYE MONTEGRANDE,  
OLUFEMI OWOLABI, U. BANIGA,

Defendants.

No. 1:20-cv-01243-ADA-HBK (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATION TO GRANT  
DEFENDANT'S MOTION FOR PARTIAL  
DISMISSAL

(ECF No. 30)

Plaintiff Curtis Miller, a former state prisoner appearing pro se, initiated this action by filing a complaint pursuant to 42 U.S.C. § 1983. (ECF No. 1.) This matter was assigned to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 3, 2022, Defendants filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (ECF No. 23.) Defendants sought partial dismissal of Plaintiff's Complaint. (*Id.*) Specifically, the motion seeks dismissal of Plaintiff's Complaint against Defendants Cates and Baniga. (*Id.*) Plaintiff failed to timely file an opposition to the motion and on January 19, 2023, the Court ordered Plaintiff to file an opposition within fourteen days of service. (ECF No. 24.) Therein, the Court notified Plaintiff that "[a]bsent any opposition by Plaintiff, the motion shall be deemed unopposed." (*Id.* at 2.) To date, Plaintiff has not filed an opposition and the time to do has expired.

On August 31, 2023, the assigned Magistrate Judge filed findings and recommendations,

1 recommending the Court grant Defendants' motion to dismiss and dismiss Defendants Cates and  
2 Baniga from this case without further leave to amend. (ECF No. 30.) The findings and  
3 recommendations were served on Plaintiff and contained notice that objections thereto were to be  
4 filed within fourteen days of service. (*Id.* at 7.) Plaintiff failed to file any objections and the time  
5 to do so has expired.

6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a  
7 de novo review of this case. Having carefully reviewed the entire file, the Court finds the  
8 findings and recommendations to be supported by the record and by proper analysis.

9 Accordingly,

- 10 1. The findings and recommendation filed on August 31, 2023, (ECF No. 30), are  
11 ADOPTED in FULL;
- 12 2. Defendants' motion to dismiss, (ECF No. 23), is GRANTED;
- 13 3. Defendants Cates and Baniga are DISMISSED from this case;
- 14 4. Defendants Drs. Montegrando and Owolabi are ordered to file their answer to the  
15 Complaint within fourteen days from the date of this Order; and
- 16 5. The Clerk of Court shall terminate Defendants Cates and Baniga.

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19 IT IS SO ORDERED.

20 Dated: October 25, 2023

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UNITED STATES DISTRICT JUDGE